

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LANDWORKS CREATIONS, LLC,
Plaintiff,

v.

UNITED STATES FIDELITY AND
GUARANTY COMPANY, and
LOVETT SILVERMAN CONSTRUCTION
CONSULTANTS, INC.
Defendants.

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C.A. No. 4:05-CV-40072-FDS

USF&G'S POSITION ON A JURY TRIAL

Defendant, United States Fidelity and Guaranty Company ("USF&G"), states the following regarding the issue of a jury trial versus a bench trial.

1. Mr. Meltzer, counsel for the plaintiff, Landworks Creations, LLC ("Landworks"), has made statements to the Court on April 29, 2008 that Landworks' claim against USF&G under Court I of its Amended Complaint was a contract claim and not a bond claim under G.L. c. 149 § 29. As so characterized, USF&G agrees that there is a right to a jury trial on that claim. It is USF&G's position only that there is no jury trial right on a Ch. 149 § 29 bond claim.

2. USF&G filed a counterclaim against Landworks for breach of contract and negligence on which there is a jury trial right.

3. Count VI of Landworks' Amended Complaint is a claim against USF&G for violations of G.L. c. 93A. USF&G states that there is no right to a jury trial under G.L. c. 93A and that this claim should be heard by the Court. USF&G understands the Court has expressed its intent to deal with this Count without advisory assistance from any jury.

Respectfully submitted,

**UNITED STATES FIDELITY &
GUARANTY COMPANY,**

By its attorneys,

/s/ Peter G. Hermes

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Dated: May 2, 2008

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants (none) on May 2, 2008.

/s/ Peter G. Hermes

Peter G. Hermes